

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XILINX, INC.,)
)
)
Plaintiff,)
)
)
v.) C.A. No. 11-666 (LPS)
)
)
INTELLECTUAL VENTURES I LLC and)
INTELLECTUAL VENTURES II LLC,)
)
)
Defendants.)

JOINT SUBMISSION ON PROPOSED CASE SCHEDULE

Pursuant to the Court's September 13, 2011 Order directing the parties to confer on a scheduling order and submit a proposal to the Court, Plaintiff Xilinx, Inc. and Defendants Intellectual Ventures I LLC and Intellectual Ventures II LLC ("Defendants") respectfully submit the following Proposed Scheduling Order and statement.

Xilinx's Preliminary Statement

As Xilinx explained in its Letter to the Court filed on September 22, 2011 (D.I. 99) and in its Motion to Dismiss or Consolidate, filed yesterday in this action (D.I. 103), Xilinx submits that this case should be dismissed, or in the alternative consolidated, because it is a mirror image of a case already pending before this Court, namely C.A. No. 10-0165-LPS (the "1065 Case"). Although Defendants' counsel has stated that Defendants would stipulate to consolidation of the two cases, they refused to enter into the proposed stipulation and stated that the stipulation was "premature" in light of the Court's Order to submit this proposed case schedule. Defendants nonetheless are trying to propose a case schedule for a multi-defendant case as if the cases were consolidated without providing the other defendants an opportunity to participate in the process.

Consequently, Xilinx respectfully submits that it is premature and potentially prejudicial to it and the other defendants in the 1065 Case to set a case schedule in this action before the two cases are consolidated, and without having the benefit of all parties weighing in on issues such as discovery, *Markman* proceedings and trial, that will potentially affect all the parties, not just Xilinx and IV. Xilinx further submits that it is premature to enter a case schedule in light of the motion for stay pending reexamination pending in both cases. (*See* C.A. No. 10-1065 (D.I. 79-81; 86); C.A. No. 11-666 (D.I. 98)).

Nevertheless, to comply with the Court's Order, Xilinx submits the attached proposed Scheduling Order (**Exhibit 1**) without prejudice to its rights to submit a different, and possibly conflicting proposed Scheduling Order in the 1065 Case in the event of the dismissal of this case or the consolidation of this case with the 1065 Case.

For the Court's convenience, a table of the parties' respective proposals for a case schedule is attached as **Exhibit 2**.

Defendants' Preliminary Statement

As Defendants explained in their September 23, 2011 letter to the Court (D.I. 100), Xilinx initiated this litigation by filing a declaratory judgment action in the Northern District of California on February 14, 2011. (D.I. 1) On July 27, 2011, Judge Illston severed and transferred to this Court the twelve claims relating to U.S. Patent Nos. 5,687,325, 6,260,087, 6,272,646, and 6,993,669. (D.I. 86) On September 13, 2011, the Court ordered the parties to submit a proposed scheduling order no later than September 27, 2011. (D.I. 95) In compliance with the Court's Order, Defendants submit the attached proposed Scheduling Order (**Exhibit 1**). For the Court's convenience, a table of the parties' respective proposals is attached as **Exhibit 2**.

Defendants have discussed with Xilinx the possibility of consolidating this action with C.A. No. 10-1065-LPS (the “10-1065 Action”), which is also currently pending before Your Honor. Defendants have not “refused” Xilinx’s proposed stipulation consolidating cases, but rather simply stated that Defendants needed time to consider the proposed stipulation and wanted to clarify its language to make clear that the parties would propose a schedule consistent with the Court’s Order. Defendants have drafted their proposed schedule to accommodate a consolidated litigation should this Court consolidate this action with the co-pending 10-1065 Action.

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